

**To:** Tom Hagler/R9/USEPA/US@EPA[]  
**From:** "Ann Hayden"  
**Sent:** Wed 2/10/2010 5:38:59 PM  
**Subject:** FW: Transcript from Law Conference--interesting read

From: Ann Hayden  
Sent: Tuesday, February 09, 2010 12:22 PM  
To: Laura Harnish; Cynthia Koehler; Spreck Rosekrans; Ashley Rood  
Subject: Transcript from Law Conference--interesting read

Someone generously fwded me this transcript from the exchange at the water law symposium. Peltier, Richard Roos-Collins, David Nawi, Art Baggett and Rod Walston were on the panel; Leshy moderated. This came up in the Q&A at the end:

Leshy: We need to have Hal Candee first ... make his rebuttal.

Candee: I do have a question for Jason, actually. I know you've put a lot of time into the BDCP, and you and Richard have both talked about some of the goals of BDCP to protect endangered species. But a lot of us in the environmental community are wondering ... the entity you work for – Westlands Water District – is helping with these two temporary restraining orders that are being brought this week to block the protections for endangered species. They supported the amendment by Sen. DeMint to suspend the Central Valley Project from the application of the Endangered Species Act. I guess recently there was a letter from the San Luis Authority, of which Westlands is the largest member, asking Sen. Feinstein to overturn Judge Wanger's decision and reinstate the old biological opinions.

So what do you say to people who are questioning whether groups like Westlands that are talking about protecting and helping the ES through the BDCP process are really committed to that, if they're doing all these actions – both in Congress and the courts – to weaken the existing protections? I know you've spent a lot of time personally trying to come up with a BDCP solution, but what's the answer to that comment?

Peltier: Oh, I don't think there's an answer. There's not. There's not an answer, Hal. I can't say ... Have you ever heard about the notion of a coyote with its leg in a steel-jawed trap? It's gonna try and get out of that trap even if it's chewin' its leg off, being self-destructive, and doing whatever he can. OK? So that's the feeling I see a lot of our guys are in.

I think a lot of our farmers are bankrupt today. They just haven't been foreclosed on. Because the banks are scared of starting that way. Payments continue to be made. But the consequences of this are huge.

So they say, "Exercise every right we have. Pursue every legal angle we have. And work on the long-term solutions at the same time." You can make it sound inconsistent, but they have ultimately the same broad societal goal, which is let's keep a million, two million acres of farmland in production. Let's keep water flowing to our cities. Let's at the same time try to figure out what it takes to help the fisheries. Something that we, to our continued ... to my personal, anyway, continued frustration, cannot seem to find answers.

When you look at the \$15 to \$30 million a year that we've spent for 30 years on Delta science and

monitoring, trying to understand the Pelagic Organism Decline that started in about 2005, I think, thereabouts; millions and millions and millions, and the scientists will buck to another group, to say, "Why don't you look at this data? We can't seem to find it." In that kind of environment, not being able to know what the problems are, or having sharp disagreements over what the problems are, it's hard to find solutions.

So we'll just keep working on all fronts.

Leshy: OK. Sorry.

Roos-Collins: Hal, I think the answer is schizophrenia. Most of the conservation groups which are members of the steering committee for the Bay Delta Conservation Plan, are co-plaintiffs with NRDC, with your cases. The rest of us are grateful that you are enforcing the law. Jason and other water representatives are on the other side of those cases, as you know. We are on very different sides with respects to whether ESA should be suspended. And we fight there as well.

But in that room, we are trying to do something different. And I was just thinking about this yesterday, when Roger Patterson, the assistant general manager for Metropolitan, commented, "Jeez, I think I'm suing or being sued by virtually everyone in this room." (Laughter.) And yet in this room, we're trying to imagine a different future.

And so the whole art of it, in my judgment, is what Jason said, which is to fight it every way you have to outside – whether in court or in Congress – but be serious about negotiations and doing something good for the Delta.

Leshy: So pray, for the BDCP. OK ...

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